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भारत INDIA
दस रुपये
TEN RUPEES

(1) (4)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 5661 OF 2007

PETITIONER :- The New India Assurance Company Limited, through – Divisional Manager the New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite- Rajeev Plaza, Bus Stand, Bilaspur [C.G.].

P.R. No. 6574/07
Presented by Shri Sourabh Sharma
Dated 11/9/07

VERSUS

RESPONDENTS CLAIMANT :- 1. Thanu Ram S/o Shri Mahangu Satnami, aged about 35 years, R/o village- Luk, P.O. – Sahaspur, Tahsil- Saja, P.S. Dhamdha, District Durg (Chhattisgarh)

OWNER CUM DRIVER 2. Kamta Prasad s/o Shri Pilu Ram, aged about 32 years, R/o village – Sonesarar, Tahsil and Police Station- Dhamdha, District Durg (Chhattisgarh)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

(25)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

Misc. Appeal (C.) No. 1062/2007

APPELLANT:		The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)
		Versus
RESPONDENTS CLAIMANT	1.	Samudiya Bai W/o Shri Budhari Satnami, aged about 50 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)
Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Misc. Appeal Under Section 173 of Motor Vehicles Act, 1988

M. A. (C.) No. 1078/2007

APPELLANT:		The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)
		Versus
RESPONDENTS CLAIMANT	1.	Makhan S/o Sakharam Satnami, aged about 30 years, resident of Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)
Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Misc. Appeal Under Section 173 of Motor Vehicles Act,1988

Misc. Appeal (C) No. 1079/2007

APPELLANT: The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)

Versus

RESPONDENTS CLAIMANT

1. Ghanshyam, S/o Goverdhan Satnami, aged about 30 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)

Owner cum Driver

2. Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Misc. Appeal Under Section 173 of Motor Vehicles Act, 1988

Misc. Appeal (C.) No. 1077/2007

APPELLANT: The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)

Versus

RESPONDENTS CLAIMANT

1. Dharmendra, S/o Gautariha Satnami, aged about 22 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)

Owner cum Driver

2. Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Misc. Appeal Under Section 173 of Motor Vehicles Act, 1988

Misc. Appeal (C.) No. 1076/2007

APPELLANT: The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)

(26)

Versus

RESPONDENTS CLAIMANT	1.	Ratnu, S/o Dhnau Satnami, aged about 60 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)
Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Misc. Appeal Under Section 173 of Motor Vehicles Act, 1988

Misc. Appeal (C) No. 1075/2007

APPELLANT: The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)

Versus

RESPONDENTS CLAIMANT	1.	Surujs Bai, W/o Shri Ratnu, aged about 47 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)
Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Misc. Appeal Under Section 173 of Motor Vehicles Act,1988

Misc. Appeal (C) No. 1074/2007

APPELLANT: The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)

Versus

RESPONDENTS CLAIMANT	1.	Smt. Surujs Bai, Wd/o Shri Balwant Satnami, aged about 50 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)

Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Misc. Appeal Under Section 173 of Motor Vehicles Act, 1988

W.P. (C.) No. 5654/2007

PETITIONER		The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)
		Versus
RESPONDENTS CLAIMANT	1.	Banthu, S/o Shri Pusau Satnami, aged about 60 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)
Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Writ Petition Under Article 227 of the Constitution of India

W.P. (C.) No. 5655/2007

PETITIONER		The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)
		Versus
RESPONDENTS CLAIMANT	1.	Goverdhan Satnami, S/o Shri Bhagbali Satnami, aged about 50 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)
Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Writ Petition Under Article 227 of the Constitution of India

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W.P. (C.) No. 5656/2007

PETITIONER		The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)
		Versus
RESPONDENTS CLAIMANT	1.	Goverdhan, S/o Shri Hariram Satnami, aged about 50 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)
Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Writ Petition Under Article 227 of the Constitution of India

W.P. (C.) No. 5659/2007

PETITIONER		The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)
		Versus
RESPONDENTS CLAIMANT	1.	Chinta Ram, S/o Shri Dulaku Satnami, aged about 50 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)
Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Writ Petition Under Article 227 of the Constitution of India

W.P. (C.) No. 5660/2007

PETITIONER		The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)
		Versus
RESPONDENTS CLAIMANT	1.	Santu, S/o Shri Budhari Satnami, aged about 35 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)
Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Writ Petition Under Article 227 of the Constitution of India

W.P. (C.) No. 5661/2007

PETITIONER		The New India Assurance Company Limited, through – Divisional Manager, The New India Assurance Company Limited, Bilaspur, 2nd Floor, Rama Trade Centre, Opposite – Rajeev Plaza, Bus Stand, Bilaspur (C.G.)
		Versus
RESPONDENTS CLAIMANT	1.	Thanu Ram, S/o Shri Mahangu Satnami, aged about 35 years, R/o Village – Luk, P.O. – Sahaspur, Tahsil – Saja, P.S. Dhamdha, District Durg (Chhattisgarh)
Owner cum Driver	2.	Kamta Prasad S/o Shri Pilu Ram, aged about 32 years, R/o Village Sonesarar, Tahsil and Police Station Dhamdha, District Durg (Chhattisgarh)

Writ Petition Under Article 227 of the Constitution of India

Present :

Shri Saurabh Sharma, counsel for the appellant/petitioner.
Shri Jitendra Gupta, counsel for respondent No. 1.
Shri Uttam Pandey, counsel for respondent No. 2.

ORAL ORDER

(Passed on 16th November, 2007)

(28)

Heard on admission.

2. By this common order Misc. Appeal (C) Nos. 1062/2007, 1078/2007, 1079/2007, 1077/2007, 1076/2007, 1075/2007, 1074/2007 and W.P.(C) Nos. 5654/2007, 5655/2007, 5656/2007, 5659/2007, 5660/2007 and 5661/2007 filed by the insurance company are being disposed of at the stage of admission with the consent of the parties.

3. The following chart would give the details of compensation awarded by the MACT against the appellant/insurance company:

Sr. No.	Misc. Appeal (C.) No./ Writ Petition (C.) No.	Claim Case No.	Compensation awarded
01.	M.A.(C) No.1062/2007	27/2006	Rs. 18,000/-
02.	" 1078/2007	33/2006	Rs. 35,000/-
03.	" 1079/2007	26/2006	Rs. 23,000/-
04.	" 1077/2007	32/2006	Rs. 10,000/-
05.	" 1076/2007	29/2006	Rs. 35,000/-
06.	" 1075/2007	34/2006	Rs. 23,000/-
07.	1074/2007	35/2006	Rs. 18,000/-
08.	W.P. (C) No.5654/2007	30/2006	Rs. 7,000/-
09.	" 5655/2007	31/2006	Rs. 5,000/-
10.	" 5656/2007	23/2006	Rs. 3,000/-
11.	" 5659/2007	25/2006	Rs. 5,000/-
12.	" 5660/2007	28/2006	Rs. 7,000/-
13.	" 5661/2007	24/2006	Rs. 8,000/-

4. The only point for consideration in all the aforesaid Miscellaneous Appeals and Writ Petitions is as to whether the MACT ought to have exonerated the appellant/Insurance Company from the liability to pay compensation due to a fundamental breach of policy.

5. Brief facts are that on 29.07.2005, the claimants in all the aforesaid Miscellaneous Appeals and Writ Petitions were traveling in Metador No. CG 04 G/8946, a goods vehicle owned by respondent No. 2 and insured by the appellant/petitioner Insurance Company. The claimants sustained injuries due to the matador turning turtle as a result of rash and negligent driving of the respondent No. 2/owner.

6. The MACT held that the accident was caused due to rash and negligent driving by respondent No. 2/owner. It fastened the liability to

pay compensation on the Insurance Company on the ground that under the policy of Insurance the risk of workman or labour was covered and the claimants were traveling in the matador as labourers of the respondent No. 2.

7. Shri Uttam Pandey, learned counsel for respondent No.2/owner did not dispute the following in this appeal:

(a) that the respondent No. 2 was the owner of the matador bearing No. CG 04 G/8946 on the date of accident;

(b) that the above mentioned matador was insured as a goods vehicle under the policy of insurance issued by the appellant/petitioner Insurance Company, and

(c) that under the policy of insurance carrying of passengers for hire or gratuitous passengers in the Matador was prohibited and would amount to a breach of policy issued by the insurance company.

8. The respondent No. 1/Claimant had in his application under Section 166 of Motor Vehicles Act mentioned that the said matador bearing No. CG 04 G/8946 was carrying 45-50 persons from Village Luk to Village Sonesarar for the work of plantation. The respondent No.2/owner in all the claim cases took the plea that no accident had occurred on 29.07.2005 with the said matador owned by him. The policy of insurance was filed by the appellant/petitioner Insurance Company which reveals, as admitted by the learned counsel for the respondent No. 2/owner, that the said matador was insured purely as a goods carrying commercial vehicle in which risk of 7 employees was covered. It is not the case of the respondent No. 2/owner that the claimants were his employees in the said matador which was insured as goods carrying commercial vehicle. Not only this respondent No. 2 entered the witness box but did not say a word as to whether the claimants were his employees. On the contrary, he has denied the factum of accident in his statement before the MACT. The claimant has deposed that at the time of the accident she was traveling in the said matador for going to village Sonesarar for the purpose of

plantation operation as a labourer. Even the claimants did not depose that they were under employment of respondent No. 2/owner.

9. In this view of the matter it is clearly borne out from the evidence on record that the claimants were traveling in the said matador not as employees of the respondent No. 2/owner but as gratuitous passengers which constitutes a fundamental breach of the policy of insurance issued by the appellant/petitioner. In this view of the matter, learned MACT erred in awarding compensation against the appellant/petitioner Insurance Company. The award passed by the MACT is liable to be set aside to the extent.

10. In the result, all the Miscellaneous Appeals and Writ Petitions are allowed. The award passed by the MACT is modified. The appellant/petitioner-Insurance Company is exonerated from the liability to pay compensation. The liability to pay compensation in all the cases referred in para 2 rests solely on the respondent No.2/owner. It shall be open to the appellant/petitioner Insurance Company to initiate execution proceedings to recover the amount of compensation statutorily deposited by it under the proviso to Section 173 of the Motor Vehicles Act from the respondent No. 2/owner.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr